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CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CA –

WESTERN DIVISION

JOSE VICENTE SANCHEZ)
)
Plaintiff)
)
v.)
)
MINSON CORPORATION)
Et al.,)
)
Defendants)
)
CONSTITUTES)
_____)

Case No.
CV 02-6078-R
(JWJ)

MEMORANDUM
AND
ORDER
DISMISSING
COMPLAINT
WITHOUT
PREJUDICE

THIS

NOTICE OF ENTRY
AS REQUIRED BY
FRCP, RULE 77(d)

I. BACKGROUND

On August 5, 2002, plaintiff Jose Vicente Sanchez filed a "Complaint for Discrimination" with this Court. On August 15, 2002, this Court issued a Minute Order advising plaintiff that, "under Federal Rule of Civil Procedure 4(m), service of the summons and complaint must be accomplished on each named defendant within 120 days after the filing of the complaint." (8/15/02 Minute Order.) Plaintiff was also advised that the time for serving the complaint would expire December 5, 2002, and that failure to effect service by that date could result in the dismissal of the action without prejudice. (Id.)

Since no proof of service was on file by January 6, 2003, this court issued an Order to Show Cause why service had not been accomplished. (1/6/03 OSC.) On January 14, 2003, plaintiff filed a Response to Order to Show Cause, attaching proofs of services on Minson Corporation and Knee & Ross, LLP dated August 6, 2002. Plaintiff also attached copies of certified mail receipts. On January 14, 2003, this Court vacated its Order to Show

Cause dated January 6, 2003 based on those proofs of service. However, upon further review of the proofs of service submitted by plaintiff, this Court determined that plaintiff did not properly serve defendants.

Plaintiff's proofs of service and accompanying certified mail receipts show that service on defendants was accomplished by mailing the complaint via certified mail. The proofs of service did not indicate that copies of the complaint and summons had been left at the defendant Minson Corporation's business offices, during usual office hours, with a person who is apparently in charge thereof, as required by California Code of Civil Procedure §415.20(a). See Fed.R.Civ.P. 4(h)(1).

On February 25, 2003, this Court issued an Order to Show Cause, allowing plaintiff ten (10) more days to provide the Court with proof that proper service had been accomplished. (2/25/04 OSC, p.2) Plaintiff was advised that to properly serve defendants, he may have copies of the summons and complaint personally delivered to defendants (Cal C.C.P. § 415.10), or, alternatively, may

have copies of the summons and complaint left at defendants' place of business with the person in charge thereof, followed by the mailing of copies of the summons and complaint by first-class mail (Cal.C.C.P.§ 415.2). (2/25/03 OSC, p.2.) The Court cautioned plaintiff that failure to provide the Court with proof of proper service within ten (10) days of the date of the Order may result in his complaint being dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). (Id.)

On May 8, 2003, the Court held a hearing on this matter at which plaintiff and counsel for defendants were present. Plaintiff asserted that he had effected proper service by leaving a copy of the Complaint with the receptionist at the offices of defendants' counsel. Defendants argued that such service is not sufficient, as defendants' counsel is not authorized to accept service on their behalf.

The hearing Court finds that plaintiff has not properly served the defendants in this action. Thus, the Complaint

must be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

II. DISCUSSION

A. Federal Rule of Civil Procedure 4(h).

Federal Rule of Civil Procedure 4(h)(a) provides for service upon a domestic or foreign corporation "in the manner prescribed for individuals by subsection (e)(1). Subsection (e)(1) states that service may be effected "pursuant to the law of the state in which the district court is located, or in which service is effected." Pursuant to California law, a plaintiff may serve a defendant by having copies of the summons and complaint personally delivered to defendants (Cal.C.C.P. § 415.10), or alternatively, by having copies of the summons and complaint left at defendants' place of business with the person in charge thereof, followed by the mailing of copies of the summons and complaint by first-class mail (Cal.C.C.P. §415.20).

Plaintiff did not serve defendants in either of these two manners. Rather, he attempted to effect service by leaving a copy of the Complaint with defense counsel's

receptionist. Such an attempt at service does not comply with the Federal Rules of Civil Procedure or the California Code of Civil Procedure. Therefore, plaintiff has failed to properly serve defendants.

B. Dismissal Pursuant to Federal Rule of Civil Procedure 4(m).

Federal Rule of Civil Procedure 4(m) provides that a district court upon its own initiative shall dismiss an action where a summons and complaint has not been served within 120 days after the filing of the complaint. Here, plaintiff was given notice in the Court's 8/15/02 Minute Order and 2/25/03 OSC that failure to file proofs of proper service of a Summons and Complaint on defendants would result in the dismissal without prejudice of this action. Plaintiff is now well past the 120-day deadline, which expired on December 5, 2002. Accordingly, dismissal of this action without prejudice is appropriate. See Johnson v. Meltzer, 134 F.3d 1393, 1396 (9th Cir. 1998) (District Court may enter order dismissing action without prejudice

for failure to serve complaint within 120 days pursuant to Federal Rule of Civil Procedure 4(m).); Hamilton v. Endell, 981 F.2d 1062, 1056-66 (9th Cir. 1992).

C. Good Cause Exception.

Federal Rule of Civil Procedure 4(m) also provides that "if the plaintiff shows good cause for the failure (to timely serve a summons and complaint), the court shall extend the time for service for an appropriate period." The Court has already afforded plaintiff an additional ten (10) days to provide the Court with proof that proper service has been accomplished. (2/25/03 OSC, p.2.) Given this previous extension of time, and plaintiff's apparent insistence at the 5/8/03 hearing that the actions he has taken to serve defendants are sufficient, the Court does not believe that another extension of the 120 day period would result in plaintiff's compliance with Federal Rule of Civil Procedure 4(h). Therefore, the Court does not find good cause to again extend the time for service.

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ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

The instant Complaint is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

DATED: May 27, 2003

//signature//

MANUEL L. REAL
United States District Judge

Presented by:

DATED: May 23, 2003

//signature//
JEFFREY W. JOHNSON
United States Magistrate Judge